S.B. CIVIL WRIT PETITION NO.5510/2004
(Smt. Manohari Devi vs. J.V.V.N. Ltd. & Ors.)

Date :: 21.03.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr.G.R. Goyal, for the petitioner.
Mr.Dilip Chouhan, for the respondents.

Heard learned counsel for the petitioner.

By way of filing present writ petition, the petitioner is challenging the judgment dated 20th May, 2004 passed by Permanent Lok Adalat, Churu.

It is submitted by learned counsel for the petitioner that on 13th January, 2003 respondents Nos. 1 and 2 issued a bill of electric charges for the month of January, 2003 in which present dues were shown as electric charges Rs.12628.62/- paisa and Rs.572.50/- paisa as electric duty total amount was shown as Rs.13,201/-. It is further contended that in addition to the above amount in column of other dues a amount of Rs.82,115/- was shown as electric charges and Rs.3,023.10/- paisa as electric duty total amount which was shown as Rs.98,339/-.

It is further contended by learned counsel for the petitioner that there was no electric bill was due against the petitioner Trust as they were regularly paying the electricity bill and the Meter which was

installed in Dharamshala for recording the electric consumption, was never stopped, but respondents by showing the Meter as stopped, raised outstanding and asked the petitioner to pay the amount. The petitioner Trust deposited Rs.45,000/- under protest against the said bill and filed an application before the Permanent Lok Adalat, Churu on 07th February, 2003 against the respondents Nos.1 and 2.

The respondent No.3 Permanent Lok Adalat, Churu directed the petitioner Trust to appear before the Settlement Committee and submit his grievances. The petitioner Trust appeared before the said Committee but the respondents Nos. 1 and 2 were not agreed to settle the dispute. The petitioner Trust filed an application before respondent No.3 and made all the submissions. After hearing the arguments of the parties, respondent No.3 dismissed the application filed by the petitioner Trust.

It is submitted that respondents Nos.1 and 2 filed reply before Permanent Lok Adalat, Churu and in para 3 it is admitted that average of electricity charges during the period January, 1998 to April, 1999 was charged on the ground that meter was defective. It is further contended by the counsel for the petitioner that in case of defective meter, the provisions of Rule 19(d) Clause 7 of the General Condition of Supply and Scale of Miscellaneous Charges relating to the Supply of Electricity (hereinafter called as General Condition) does not apply because this provision is applicable where the meter

is stopped and seized to be stopped for recording the electrical consumption. Therefore, in the case of petitioner Trust the said provisions are not applicable. Hence the demand raised by the respondents Nos.1 and 2 deserves to be quashed.

Further it is contended that in case of average charges on the basis of defective meter, the provisions of Section 26(6) of the Indian Electricity Act shall be applicable which read as under:-

> "26(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained is the supply, during such time, no exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount of quantity;
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> Provided that before either a licencee or a consumer applies to the Electrical Inspector under the sub-section, he shall give to the other party not less than seven days' notice of his intention to do so."

Thus, the judgment impugned is contrary to the Section 26(6) of the Act and demand raised on the basis of defective meter deserves to be set aside.

Learned counsel for the respondents vehemently opposed the prayer and contended that the judgment passed by Permanent Lok Adalat cannot be challenged because the Permanent Lok Adalat has

decided the matter on merit, therefore, the writ petition is not maintainable.

Upon this objection, counsel for the petitioner submits that there is no provision of filing an appeal against the order of Permanent Lok Adalat. So in the event of judgment contrary to the provisions of the Act only remedy is available to the petitioner to file present writ petition under Article 226 and 227 of the Constitution of India.

Learned counsel for the petitioner has invited attention of the Court towards the judgment reported in 2005 (4) SCC 327 [Bombay Electricity Supply & Transport Undertaking vs. LAFFANS (India) (P) Ltd. & Anr.] so also the judgment of Hon'ble Supreme Court reported in AIR 1988 SC 71 [M.P.E.B. & Ors. vs. Smt. Basantibai] in both the cases it has been held by Hon'ble Apex Court that in the event of defective meter Section 26(6) of the Act will apply and this provision is not considered by the Permanent Lok Adalat at the time of adjudicating the matter, as such, the order under challenge is totally contrary to the law, therefore, the remedy of writ petition is maintainable.

I have perused the entire record of the case and give my thoughtful consideration to the arguments advanced by both the parties.

In my opinion, nobody can left remedyless and if no remedy is

available under the particular statute then obviously power can be exercised under Article 226 and 227 of the Constitution of India when any order is passed contrary to the provisions of law.

I have perused Section 26(6) of the Indian Electricity Act also. In this case, the demand has been raised by the respondents Nos.1 and 2 on the ground that meter was defective and if meter was defective then Section 26(6) of the Act will apply. Admittedly upon perusal of the judgment of Permanent Lok Adalat, it is revealed that the judgment is erroneous because learned Permanent Lok Adalat has not considered important aspect of the matter that demand has been raised on the basis of defective meter by the respondents.

In these circumstances, this writ petition is maintainable against the judgment of Permanent Lok Adalat which has been passed without considering Section 26(6) of the Act. Accordingly, the petition is allowed. The judgment passed by Permanent Lok Adalat dated 20th May, 2004 is set aside and the case is remitted to the Permanent Lok Adalat with the direction that after hearing both the parties and considering Section 26(6) of the Indian Electricity Act so also the grounds if any raised, the matter may be decided afresh within a period of three months from the date of receipt of the order.

[GOPAL KRISHAN VYAS],J.

A.K. Chouhan/-